IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.228 OF 2005.

Shri Shrirang Appaji Atkari : Appellant.

versus

Shri Sarjerao Appaji Atkari
Since deceased through his LRs.
Smt.Subatra Sarjerao Atkari
& ors. : Respondents.

Mr.A.V.Anturkar for the appellant.
Mr.I.M.Khajrai i/by Mr.V.B.Naik for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 01st September 2005.

ORAL ORDER

1. Heard advocates for the appellant and respondents. The appellant is the original defendant No.1 against whom a permanent

injunction was passed by the appellate Court restraining him from disturbing the possession of the plaintiffs over the Gat No./Survey No.128.

2. According to Mr.Anturkar, appearing for the appellant, the defendant No.1 was in possession and, therefore, the suit simplicitor for injunction was not maintainable and the plaintiffs should have filed a suit for possession.

. In order to substantiate his contention, Mr.Anturkar drew my attention to the fact that a statement of the defendant was recorded by the Tahasildar, copy of which is produced on record and in that statement the defendant has stated that he is in exclusive possession of the suit property. The judgment of the court below appears to be based on this admission of the defendant.

3. However, the trial Court has considered this aspect also and noted in para 6 that in the year 1982-83 there was an entry in favour of the defendant for 7x12 extract and also for 1985-86. However, there is an order of the Tahasildar

dated 18/4/86 which shows that mutation entry No.773 dated 7.2.85 was cancelled.

4. When the whole issue is about the possession of the property and that the defendant/appellant has nothing with him to show that he was in exclusive possession and the statement before the Tahasildar, being the admission in his own favour, cannot be accepted in preference to the revenue record, the courts below were justified in holding against him. No substantial question of law is involved in this appeal. There is no merit in this appeal. The appeal is dismissed.

[D.G.DESHPANDE,J]